

NO. 7:22-CV-025-FL

ORDER

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testimony of plaintiff's proffered expert witness. The court ruled on these motions by order entered September 25, 2023, ("the challenged order"), finding in relevant part that defendant breached its contract to insure up to \$210,000.00 in farm equipment, and directed the parties to propose a briefing schedule on the issue of damages. (DE 68).

The parties proposed such briefing schedule October 24, 2023, and defendant moved for certification of interlocutory appeal and a stay of the proceedings October 25, 2023. Plaintiff responded in opposition, but the parties filed a notice of settlement and motion to stay case deadlines shortly thereafter. The instant motion, which requests that the court vacate the challenged order under Federal Rule of Civil Procedure 60 and remove it from the ECF docket, was filed on December 1, 2023. The court set telephonic hearing for December 28, 2023.

### **COURT'S DISCUSSION**

At hearing, Michael Medford and Spencer Wiles appeared for plaintiff and Alexandra Bachman and Frank Falcone appeared for defendant. Counsel for defendant argued that the parties qualify for relief under the "catch-all" provision of Rule 60(b)(6), which provides that the court "may relieve a party" from an order for "any other reason that justifies relief."

"[W]here mootness occurs because of settlement," the parties surrender their "claim[s] to the equitable remedy of vacatur, at least absent exceptional circumstances." Valero Terrestrial Corp. v. Paige, 211 F.3d 112, 118 (4th Cir. 2000);<sup>1</sup> see also Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 864 (1988) (noting that relief under Rule 60(b)(6) "should only be applied in extraordinary circumstances").

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<sup>1</sup> Throughout this order, internal quotation marks and citations are omitted unless otherwise specified.

No exceptional circumstances appear to exist in this case, where the parties seek only to avoid the cost of appeal. In addition, the court is without the power to remove an order from the docket once it is entered. Accordingly, the motion is denied.

Where counsel for the defendant indicated at hearing that a settlement has been agreed upon, the parties are directed to file a status report within 21 days of entry of this order indicating the necessity of conducting briefing on the issue of damages.

SO ORDERED, this the 28th day of December, 2023.

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LOUISE W. FLANAGAN  
United States District Judge